

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FAIRWAY RESTAURANT EQUIPMENT
CONTRACTING, INC.

Plaintiff,

vs.

KAKU MAKINO, JOON HO HA; DOE
DEFENDANTS 1 through 10; and ROE
ENTITIES 1 through 10,

Defendants.

Case No. 2:13-cv-02155-JCM-NJK

ORDER

Before the Court is Plaintiff's *Ex Parte* Motion to Extend Time for Service (Docket No. 11) and Motion for Leave to Serve by Publication (Docket No. 14), each of which was filed on March 21, 2014. The Court finds this matter properly resolved without a hearing. *See* Local Rule 78-2. For the reasons discussed below, the Motion to Extend Time for Service is hereby **GRANTED**. For the reasons discussed below, the Motion for Leave to Serve by Publication is hereby **DENIED** without prejudice.

I. BACKGROUND

On November 21, 2013, Plaintiff Fairway Restaurant Equipment Contract, Inc. filed its Complaint in this Court. Docket No. 1. Central to Plaintiff's allegations in this case is the existence

of “a substantial debt” owed by Makino Premium Outlet LV, LLC (“Makino Premium”)¹ to Plaintiff. *Id.* at 3. Following a 2009 jury trial in Nevada State Court, Plaintiff obtained a judgment against Makino Premium. *Id.* at 4. In the present matter, Plaintiff alleges that, as it was seeking to enforce this judgment, Defendant Makino and Defendant Ha (collectively, “Defendants”) caused the assets of Makino Premium to be transferred to Defendants and others for the purpose of defrauding Plaintiff as Makino Premium’s creditor. *Id.* at 3.

Despite multiple attempts at Defendant Makino’s last-known address,² Plaintiff has not been able to complete service on Defendant Makino.³ Plaintiff has also not been able to complete service on Defendant Ha. Plaintiff asserts that Defendant Ha “may be residing in Sherman Oaks, California[,]” but has not yet attempted service at this California address.⁴ *See* Docket No. 11, at 2-3.

A. Service Attempts on Defendant Makino

Plaintiff’s first of twelve attempts at service on Defendant Makino took place on February 12, 2014, at his last-known address of 3736 Lindell Dr., Las Vegas, NV 89103. *See* Docket No. 11, at 16-17. Upon attempting service, however, the process server was unable to locate Defendant Makino and, therefore, efforts to serve process on Defendant Makino failed. *Id.* Thereafter, Plaintiff conducted additional database searches, including restricted access databases, Clark County public records searches, Nevada Justice Court and District Court records searches, and a search of the

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Makino Premium is a bankrupt nonparty to this action. *See* Compl. at 4.

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As provided by the Nevada Department of Motor Vehicles. *See* Docket No. 11, at 9.

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Plaintiff’s Affidavit of Attempts does not demonstrate any service attempts at an address other than 3736 Lindell Drive, *see* Docket No. 11, at 16-17, despite Plaintiff’s process server’s statement in his Affidavit of Due Diligence that “attempts to serve the defendant at the last-known address[] ... of ... 4575 Dean Martin Dr., Las Vegas, NV 89103 were to no avail.” Docket No. 11, at 11.

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Plaintiff states that it “will seek to serve Ha there before servicing by publication.” *See* Docket No. 11, at 2-3.

1 Nevada Department of Motor Vehicles. *See* Docket No. 11, at 6-9. Those searches provided
 2 additional residential and business address information, including eight addresses associated with
 3 Defendant Makino, seven of which are located in Las Vegas. *Id.* There is no record that Plaintiff
 4 ever attempted to serve Defendant Makino at any of these other addresses. *See, e.g.*, Docket No. 11,
 5 at 16-17.

6 **B. Service Attempts on Defendant Ha**

7 Plaintiff's first of three attempts at service on Defendant Ha took place on February 12, 2014,
 8 at 3736 Lindell Dr., Las Vegas, NV 89103.⁵ *See* Docket No. 11, at 19. Upon attempting service,
 9 however, the process server was unable to locate Defendant Ha, and, therefore, efforts to serve
 10 process on Defendant Ha failed. *Id.* Thereafter, Plaintiff conducted additional database searches,
 11 including restricted access databases, Clark County public records searches, Nevada Justice Court
 12 and District Court records searches, a search of the Nevada Department of Motor Vehicles, and a
 13 national database search. *See* Docket No. 11, at 12-14. The national database search provided a
 14 possible current address for Defendant Ha of 4533 Vista Del Monte Ave., #102, Sherman Oaks, CA
 15 91403. *Id.* at 13. Plaintiff concedes that it has not yet attempted service on Defendant Ha at this
 16 California address. *See* Docket No. 11, at 3, 14.

17 **II. DISCUSSION**

18 **A. Extending Service Period**

19 Rule 4(m) of the Federal Rules of Civil Procedure provides that a defendant must be served
 20 within 120 days after a complaint is filed. Fed. R. Civ. P. 4(m). The rule also provides that if
 21 service is not timely made, the Court "must dismiss the action without prejudice against that
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23 ⁵

24 None of the records searches performed on Defendant Ha indicates any association with the
 25 Lindell Drive property. *See* Docket No. 11, at 12-14. Instead, the national database search performed by
 26 Plaintiff's process server indicates a possible current address of 4533 Vista Del Monte Ave., #102,
 27 Sherman Oaks, CA 91403. *Id.* at 13. It is, accordingly, unclear why service on Defendant Ha was
 28 attempted at the Lindell Drive property. Plaintiff's process server merely states in his Affidavit of Due
 Diligence that the fact that the Lindell Drive property was associated with the last-known address of
 Defendant Ha was based on "information provided to me[.]" presumably by Plaintiff's counsel. *Id.* at
 12.

1 defendant or order that service be made within a specified time....If the plaintiff shows good cause
2 for the failure, the court must extend the time for service for an appropriate period.” *Id.* “As a
3 general matter, a showing of good cause requires more than simple inadvertence, mistake of counsel,
4 or ignorance of the Rules of Civil Procedure.” *Nat’l Union Fire Ins. Co. of Pittsburgh, PA v.*
5 *Monroe*, 2011 WL 383807, *1 (D. Nev. Feb. 2, 2011); *citing e.g., Martin v. Longbeach*, 246 F.3d
6 674 (9th Cir. 2000); *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir. 1992) (overruled on other grounds
7 by *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997)). “At a minimum, good cause
8 means excusable neglect.” *Martin*, 246 F.3d at 674.

9 Here, Plaintiff has diligently attempted to serve Defendant Makino at his last-known address
10 in Las Vegas, Nevada. Though Plaintiff has been unable to complete service at this address, Plaintiff
11 has located through diligent inquiry, several additional Las Vegas addresses associated with
12 Defendant Makino which may prove fruitful.

13 Plaintiff has also unsuccessfully attempted to serve Defendant Ha at his last-known address
14 in Las Vegas, Nevada. Plaintiff’s national database inquiry has yielded a potential current California
15 address for Defendant Ha, though Plaintiff has not yet attempted service at this address. Plaintiff
16 should be given the opportunity to serve Defendant Ha at this California address.

17 Plaintiff is attempting to enforce a judgment entered following a jury trial in Nevada State
18 Court. As such, Defendants will not be prejudiced by a minimal extension of time. Moreover,
19 Plaintiff has uncovered through diligent records searches additional addresses which may prove
20 efficacious in perfecting service on Defendants. Therefore, the Court finds that good cause exists to
21 extend the time for service as to each Defendant. Plaintiff requests an additional ninety (90) days to
22 complete service. In light of the foregoing facts and Plaintiff’s efforts to serve Defendants, the Court
23 grants the requested extension.

24 **B. Service by Publication**

25 Rule 4(e)(1) of the Federal Rules of Civil Procedure provides for service upon individuals
26 who may be served “pursuant to the law of the state in which the district court is located, or in which
27 service is effected.” *Id.* In Nevada, Rule 4 of the Nevada Rules of Civil Procedure (“NRCF”) governs service of parties under state law. *Nat’l Union Fire*, 2011 WL 383807. Parties are required

1 to personally serve a summons and the complaint upon defendants. When personal service proves
 2 impossible, NRCP 4(e)(1)(i) provides that a party may move for service by publication where the
 3 opposing party “resides out of the state, or has departed from the state, or cannot, after due diligence
 4 be found within the state, or conceals himself to avoid the service of summons.” *Id.*

5 “A party seeking service by publication must seek leave of court by filing an affidavit
 6 demonstrating its due diligence in attempting to personally serve the defendant. There are several
 7 key factors Nevada courts look to in evaluating a party’s due diligence in effecting service.” *Id.*
 8 Nevada courts consider the number of attempts made by a plaintiff to serve a defendant at his or her
 9 residence and other methods of locating defendants, such as consulting public directories and family
 10 members. *Id.*; citing *Price v. Dunn*, 787 P.2d 785, 786-7 (Nev. 1990), *rev’d on other grounds*, *NC-*
 11 *DSH, Inc. v. Garner*, 125 Nev. 647, 651 n.3 (2009); *Abreu v. Gilmer*, 985 P.2d 746 (Nev. 1999);
 12 *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994). The basic rule is that all reasonable means of
 13 locating and serving the defendant should be employed. *See Price*, 787 P.2d at 787. In *Abreu v.*
 14 *Gilmer*, the Nevada Supreme Court clarified the due diligence inquiry, stating

15 Despite our previous decisions on this issue, we note that there is no objective, formulaic
 16 standard for determining what is, or is not, due diligence. The due diligence requirement
 17 is not quantifiable by reference to the number of service attempts or inquiries into public
 18 records. Instead, HN5 due diligence is measured by the qualitative efforts of a specific
 19 plaintiff seeking to locate and serve a specific defendant. As the Utah Supreme Court
 20 recognized:

19 “The diligence to be pursued and shown . . . is that which is reasonable under the
 20 circumstances and not all possible diligence which may be conceived. Nor is it that
 21 diligence which stops just short of the place where if it were continued might reasonably
 22 be expected to uncover an address . . . of the person on whom service is sought. . . . Due
 23 diligence must be tailored to fit the circumstances of each case. It is that diligence which
 24 is appropriate to accomplish the end sought and which is reasonably calculated to do so.”

22 *Abreu*, 985 P.2d at 749 (quoting *Parker v. Ross*, 217 P.2d 373, 379 (Utah 1950)).

23 Here, Plaintiff discovered Defendant Makino’s last-known address and has made twelve
 24 unsuccessful attempts to serve him at that address. Plaintiff has also identified at least eight other
 25 addresses associated with Defendant Makino, seven of which are located in Las Vegas, but has not
 26 attempted service at any of these locations. While it is apparent that Plaintiff’s process server has
 27 made a good faith effort to locate Defendant Makino at his last-known address, the showing of due
 28 diligence required by Nevada law for service by publication has not been met given the failure of

1 Plaintiff to attempt service on Defendant Makino at any of the additional addresses identified by
2 Plaintiff in its Affidavit of Due Diligence. *See Abreu, supra*; Docket No. 11, at 6-10.


3 With respect to Defendant Ha, Plaintiff's national database search provided a possible
4 current address in Sherman Oaks, California. Plaintiff has stated that it will seek to serve Defendant
5 Ha at this address before servicing by publication. *See* Docket No. 11 at 2. Accordingly, it would be
6 premature for the Court to rule on whether service by publication as to Defendant Ha is warranted at
7 this time.

8 **III. CONCLUSION**

9 Based on the foregoing,

10 IT IS HEREBY ORDERED that the Motion to Extend Time for Service is hereby
11 **GRANTED**. The Motion for Leave to Serve by Publication is hereby **DENIED** without prejudice.

12 DATED: April 10, 2014.

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16 NANCY J. KOPPE
17 United States Magistrate Judge
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